

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS and its affiliated LOCAL UNION
NO. 776 (UNITED PARCEL SERVICE, INC.)

and

Case No. 4-CB-166651

HENRY HAIRSTON, an Individual

and

Case No. 4-CB-170828

JAMES WISE, an Individual

Lea Alvo-Sadiky, Esq.,
for the General Counsel.
*Irwin W. Aronson, Esq. (Willig, Williams
& Davidson)*,
for the Respondent.
Jacques Brown, Sr. and John Farhan,
for Charging Party Hairston.

DECISION

STATEMENT OF THE CASE

Robert A. Giannasi, Administrative Law Judge. This case was tried in Philadelphia, Pennsylvania on February 6, 2017. The consolidated complaint alleges that Respondent Union violated Section 8(b)(1)(A) and/or 8(b)(2) of the Act in two discrete sets of circumstances: First, it alleges that Respondent threatened an employee with internal union discipline if he supported a fellow employee's grievance filed with their employer, United Parcel Service, Inc. (hereafter, UPS). Second, it alleges that Respondent violated its duty of fair representation as bargaining agent for UPS employees when it removed another employee's name from a job bidding list, causing him to lose the job he had bid on, and when it failed to follow through on its promise to file a grievance on his behalf. The Respondent filed an answer denying the essential allegations in the complaint.

After the trial, the General Counsel and Respondent filed briefs, which I have read and considered. Based on those briefs and the entire record, including the testimony of witnesses and my observation of their demeanor, I make the following

FINDINGS OF FACT

I. Jurisdiction

As Respondent admits, it is a labor organization within the meaning of Section 2(5) of the Act. Respondent also admits that UPS, an Ohio corporation with facilities throughout the United States that provides package delivery services, is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

II. Alleged Unfair Labor Practices

Background

The Respondent Union represents a unit of some 2,000 feeder drivers, sorters, package handlers, and other employees at UPS's Harrisburg, Pennsylvania facility or hub. Respondent and UPS have long maintained and enforced collective bargaining agreements covering the terms and conditions of employment of the Harrisburg employees. There are actually two such agreements: The first is a national master agreement covering all UPS facilities nationwide with the International Teamsters Union and its constituent locals. The second is a supplemental local agreement covering, for the purpose of this case, the Central Pennsylvania UPS facilities, including the Harrisburg hub, and six Teamsters locals, including Respondent Local 776. The applicable supplemental agreement includes a grievance and arbitration procedure. Tr. 11-14.¹

Respondent's officials, Business Agent David Licht and Steward Robert Sholly, have representative responsibilities on behalf of Respondent in dealing with employees working at the Harrisburg hub and with their employer, UPS. Accordingly, I find that they are agents of Respondent within the meaning of Section 2(13) of the Act.²

The Job Bidding Issue

The Facts

UPS conducts an annual job posting bid for full-time inside employees (sorters, package handlers and shifters), based on seniority, where employees can bid on certain protected or guaranteed positions for which they are qualified. The bidding also results in the allocation of vacations. There are two categories of positions in the bidding,

¹ In a post-trial March 7, 2017 letter, counsel for the General Counsel moved for the admission of G.C. Exhs. 2 and 3, copies of the agreements referenced above, which were identified but inadvertently not introduced in evidence in the trial. There is no objection to this request. I therefore admit the documents in evidence.

² In its answer, Respondent admitted to the agency status of Licht, but simply admitted that Sholly was a steward without mentioning agency status. Citing relevant authority, the General Counsel's brief (G.C. Br. 25, fn. 27) points out that union stewards are viewed as agents. That view is supported by the record evidence in this case. Respondent did not contest Sholly's agency status either at the hearing or in its post-hearing brief.

based on articles in the national master agreement—Article 22.2 positions, and Article 22.3 positions. At the Harrisburg hub, there are 75 Article 22.2 positions and 45 Article 22.3 positions subject to the bidding, which takes place during a two week period each January. Tr. 13-17. Although UPS administers the bidding procedure, a representative
 5 of Respondent is present, at the invitation of UPS, along with a representative of UPS management. The Respondent thus has a cooperative relationship with UPS management officials in the bidding procedure. Tr. 33-34, 120-122, 136-137, 141.

10 This case involves the January 2016 job bidding for the 75 Article 22.2 positions at the Harrisburg hub. The two major positions involved are sorters, which are the highest skilled and paid jobs, and package handlers, unskilled and lesser paid jobs. Most of the available positions are sorter jobs. The first numbered positions are sorters' jobs; the later ones are package handlers' jobs. Tr. 17-22, 120-121, 124-125, G.C. Exh. 4. Although seniority governs, the person bidding the job must have the requisite skills
 15 and physical ability to do the job. More specifically, a bidder for a sorter's job must not be limited in lifting certain weights or repetitive lifting. Tr. 30-33. If an employee has an accommodation restricting his ability to lift or handle certain weights required of a sorter that would disqualify him from the sorter position. Tr. 35-37, 119.

20 Employee James Wise, who was a package handler at the time (Tr.41-42), bid on a sorter's position in the January 2016 bid. Although he was fourth in terms of seniority, he had an accommodation, which he had requested based on the Americans with Disabilities Act (ADA). According to the accommodation document, finalized on January 3, 1996, Wise requested a "small sort bagger" position. R. Exh. 1. That
 25 position is not a sorter's position; it is a package handler's position, which has more stringent lifting restrictions. Tr. 41-42, 53-55, 119, 137, 168. The accommodation document describes Wise's disability as a "back injury which prevented him from doing heavy lifting." R. Exh. 1. Wise admitted he never asked for an adjustment of the accommodation (Tr. 52-53), which, according to a UPS management official, is still
 30 operative. Tr. 37-39. The lifting restriction in Wise's accommodation thus disqualified him from the sorter's position on which he bid. Tr. 53-54, 119, 137, 147-149, 168, G.C. Exhs. 5-7, R. Exh. 1.

35 Union Steward Robert Sholly was the Respondent's representative assigned to assist in the bidding procedure. He was not present on the first day of the January 2016 bidding, a Monday, when Wise signed in the number 4 position on the bid; that position was a sorter's position. The next day, a Tuesday, when he noticed that Wise had signed for a sorter's position, Sholly deleted Wise's name from the number 4 position and placed Wise in the number 61 position, which was the first number for a package
 40 handler's position. He did this because he knew of Wise's accommodation, which disqualified Wise from the sorter's job. At the time, Sholly discussed the matter with his UPS management counterpart, Rick Kane, who agreed with the change. Tr. 144-149, G.C. Exh. 4.³

³ Wise did not bid on a sorter's job in the January 2017 bid; he only signed for the package handler position that he held. Tr. 64-65.

Wise testified that he was told by a fellow employee the day after he signed the bid that a change was made. The following day he confronted Sholly about the matter in the room where the bidding was taking place. According to Wise, Sholly replied with a profanity and said that Wise was “always in his way.” Wise also testified that

5 Business Agent Licht was present at the time. Tr. 45. Wise left and returned to speak with Licht, who said something about back pay and “we should grieve this.” Tr. 45. In a further conversation with Licht and Sholly, according to Wise, the three discussed the pay difference between the sorter position and the package handler position occupied by Wise. Wise testified that Sholly and Licht said that they would try to get him a raise.

10 Tr. 46. Wise further testified that Sholly came up to him the next day and again a week later and said that “we’re going to grieve it.” Tr. 47.⁴

Sholly testified that, on Tuesday, the second day of the bidding, Wise came into the room where the bidding was taking place and complained to him about the change

15 in his bid. Sholly explained why he changed the bid. Tr. 149-151. Business Agent Licht was also present and he corroborated Sholly’s account. Licht also talked separately to Wise about his bidding complaint. Licht then went to talk to Sholly, who confirmed he had made the change based on Wise’s accommodation that disqualified him from the sorter’s position. Licht also talked to UPS management personnel, who

20 were also present, and they agreed that Wise was disqualified. Licht then asked UPS management for documentary proof of the accommodation, after telling Wise he was going to do so. That proof, in the form of Wise’s existing accommodation, was provided to Licht by a UPS official several days later. Licht confirmed that the accommodation restricted Wise to the work of a small sort bagger, a package handler classification, not

25 a sorter classification. Tr. 164-169, 201, R. Exh. 1.⁵

Both Sholly and Licht denied telling Wise that they were going to file a grievance on Wise’s behalf over the bidding matter. Sholly testified that Wise did not even ask him to file a grievance. Tr. 150-151. Licht not only denied that he agreed to file a

30 grievance on Wise’s behalf, but he also denied saying anything about backpay. He did testify that he told Wise that, if he thought his rights were being violated, he could himself file a grievance. Tr. 169-170. It is clear that individual employees in the UPS unit may file grievances on their own and most grievances are filed by individual employees. Tr. 117-118, 169-170.

35 I do not credit Wise’s testimony that Sholly reacted to Wise’s complaint about Sholly changing his bid by uttering a profanity and saying that Wise was “always getting in my way.” Instead I credit Sholly’s testimony on this matter. I found Sholly to be a very reliable witness with a forthright demeanor. On the other hand, as indicated below,

40 I found Wise not to be a reliable witness.

⁴ No grievance over the change in Wise’s bidding position was filed either by Wise or by any representative of Respondent.

⁵ The testimony of Sholly and Licht that UPS management officials agreed that Wise’s accommodation disqualified Wise from the sorter’s position was uncontradicted.

I also credit Sholly's and Licht's testimony that they did not promise to file a grievance on Wise's behalf. Their testimony on this part of the case was clear, candid and reliable. It was also mutually corroborative in denying they promised to file a grievance. Wise, on the other hand, seemed confused and unfocused in some of his testimony. Nor does Wise's testimony about the alleged promise by the Respondent's representatives to file a grievance ring true. It defies belief that Sholly, who, according to Wise, reacted to his complaint about Sholly changing his bid position by negatively hurling a profanity his way, would then agree to file a grievance to undo that action. Nor is it plausible that both Sholly and Licht would agree to file a grievance on Wise's behalf when Sholly's action in changing Wise's bid was affirmed by UPS management officials, particularly when Licht asked for and received documentary proof of Wise's disqualifying accommodation.

Analysis

The General Counsel alleges that Respondent violated Section 8(b)(2) and 8(b)(1)(A) and of the Act by removing Wise's name from the bidding list for a sorter position and thus causing or attempting to cause UPS not to consider or select him for the position. The General Counsel also alleges that Respondent violated Section 8(b)(1)(A) by failing to file a grievance on Wise's behalf when he was not selected as a sorter, after promising to do so. These allegations bring into play a union's duty of fair representation, which requires a bargaining agent to treat employees it represents in a manner that is not arbitrary, discriminatory or in bad faith. *Vaca v. Sipes*, 386 U.S. 171, 190 (1967). See also *International Union of Operating Engineers Local 181 (Maximum Crane Works)*, 365 NLRB No. 6, slip op. 4-5 (2017) and cases there cited.

I find that Respondent's actions with respect to Wise were not arbitrary, discriminatory or made in bad faith. First of all, based on my credibility determinations, I find that neither Sholly nor Licht agreed to file a grievance on Wise's behalf over the bidding change. Wise was entitled to file a grievance on his own, but he did not. Nor is there any credible or persuasive evidence in this record that any grievance that might have been filed would have been successful, particularly in view of the agreement of UPS officials with Respondent's position. Second, Sholly's change in Wise's bidding position was based on Wise's accommodation and lack of qualifications for the sorter's position. That change was confirmed by UPS management. Licht did not even accept management's oral representation about the Wise's lack of qualifications because of the accommodation. He insisted on documentary proof, which was later provided to him. Indeed, had Respondent's representatives overlooked Wise's disqualification and kept him in the number 4 position for the sorter's job, they would have prejudiced other people they represented by costing them job selections that Wise's intervention in the sorters' part of the bid would have caused. That might have resulted in a charge of lack of fair representation by other employees. Thus, Respondent's actions in the bidding process were entirely reasonable.⁶

⁶ In her brief, counsel for the General Counsel asserts that testimony, presumably by all witnesses including Wise, concerning Wise's ability to perform the sorter's job, is "irrelevant" because Respondent took it upon itself to eliminate Wise from obtaining the position. G.C. Br. 29. But this assertion misses

In her brief (G.C. Br. 23-25), counsel for the General Counsel urges a violation of Section 8(b)(2) because Respondent caused or attempted to cause employer discrimination against Wise not only under what is called a fair representation standard, but also under a *Wright Line* standard that specifically requires an analysis of motivation.⁷ Neither standard justifies a finding of a violation in the Wise bidding matter.

The General Counsel cites cases, including *Graphic Communications Workers Local 1-M (Bang Printing)*, 337 NLRB 662, 673 (2002), for the proposition that a union presumptively violates Section 8(b)(2) and (b)(1)(A) under the fair representation standard if it affects an employee-member's job situation. The only exceptions, according to the General Counsel, are where the union's action is necessary to the effective performance of its representative function⁸ or its need effectively to represent its constituency as a whole.⁹ I am not sure that, even under the asserted standard, the General Counsel has established a rebuttable presumption on the facts of this case. Thus, I cannot find that Respondent "caused" or "attempted to cause" UPS to reject Wise for the sorter's position for discriminatory or other unlawful reasons. Indeed, as shown above, UPS management agreed with Respondent's position that Wise was not qualified for the position because of his accommodation. In a real sense it was the accommodation that caused Wise's loss of the sorter position. Even if I could find that a rebuttable presumption was established under the General Counsel's standard, however, I would also find that it was rebutted in this case. Thus, I also find, for the reasons stated above, that Respondent's action was necessary in the effective performance of its representative functions and its need to represent its constituency as a whole. Respondent clearly had a cooperative relationship with UPS in administering the bid procedure for obvious reasons of fairness to all employees in the unit, including those who would have been prejudiced and lost a position or received a less desirable position by giving Wise, based on his favorable seniority, a position for which he was not qualified. In view of the limited number of sorter's jobs available in the bid and the premium that seniority played in obtaining favorable positions, the inference of widespread likely prejudice to other employees is obvious. Contrary to the General Counsel's contention, there is no need for more specific evidence on the point.

the mark. The most important pieces of evidence on this part of the case are Wise's existing accommodation, documentary evidence that describes his position and precludes him from "heavy lifting," and the uncontradicted testimony that UPS management officials who participated in the bidding process agreed with Respondent's view that Wise was not qualified for the position based on his accommodation. The General Counsel's reliance on the testimony of UPS Labor Relations Manager Wayne Foulke—that theoretically an unqualified bidder could be considered for the job based on an adjustment to his accommodation and special training—is misplaced. Much of Foulke's testimony about the Wise bid was hypothetical, but, in its most essential parts, it actually works against the General Counsel's position. Foulke did not participate in the January 2016 bid process and had no input in the bid or its resolution. Indeed, Foulke testified that, in his experience, he was unaware that any employee with a disqualifying accommodation for a job he bid on had actually ever received that job. Tr. 29-40.

⁷ *Wright Line*, 251 NLRB 1083 (1980), enfd. on other grounds 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

⁸ Citing *Acklin Stamping*, 351 NLRB 1263, 1263 (2007).

⁹ Citing *Plasterers, Local 299 (Wyoming Contractors Assn.)*, 257 NLRB 1386, 1395 (1981).

The General Counsel also alleges that, under the asserted *Wright Line* standard, Respondent was unlawfully motivated in changing Wise's bid position because of Wise's union or other protected concerted activity. Here again, the causal connection to employer action is questionable because UPS officials agreed with the Respondent's position. I also have difficulty in determining what particular union or other protected activity Wise engaged in that allegedly motivated Respondent in changing Wise's bid. The General Counsel's most prominent piece of evidence on improper motivation is Wise's testimony about what Sholly told Wise when Sholly explained why he made the change. But I have discredited Wise's testimony on that point. There is no other credible or persuasive evidence that Sholly or anyone else in Respondent's hierarchy targeted Wise for his protected or union activity. Thus, I cannot find that the General Counsel even made an initial showing that Sholly was motivated by Wise's alleged protected or union activity in changing Wise's bid. But even if I could make such a finding, I would also find that Respondent has shown that it would have made the change, which was confirmed by UPS management, even absent Wise's alleged protected activity, for a legitimate, non-discriminatory reason—Wise's disqualifying accommodation.

Accordingly, the General Counsel has failed to prove the alleged violations in the Wise bidding part of this case by a preponderance of the credible evidence.¹⁰

¹⁰ Wise claimed that five named individuals were employed as sorters with sorters' pay despite having accommodations, implying that his situation warranted consideration for a sorter's job despite his accommodation. Tr. 67-71. I gave counsel for the General Counsel an opportunity to prove the claim with documentation in a motion to reopen the hearing. Tr. 206-207. On March 7, 2017, the General Counsel submitted a cover letter from counsel for UPS and other documents identified as G.C. Exh. 16 and requested that they be admitted into evidence under seal because they contained confidential information about employees not directly involved in this case. Respondent agrees to the General Counsel's request. Accordingly, G.C. Exh. 16 is received in evidence under seal. I also accept and receive into evidence, as ALJ Exh. 1, a post-hearing joint stipulation of the parties as to sorter's pay. My order to that effect is issuing separately this day and it is also contained as Appendix B to this decision. The parties agree that the hearing need not be reopened for additional testimony and that, with the receipt into evidence of G.C. Exh. 16 and ALJ Exh. 1, the record is complete.

I find that neither Wise's testimony nor G.C. Exh. 16 requires a different result on the complaint allegations involving Wise. First of all, Wise's testimony is not accurate. According to the cover letter (G.C. Exh. 16(a)), only one of the five individuals named by Wise (George Ofak) is actually working under an ADA accommodation and that employee began working under the accommodation in April 2016. Although Ofak is a small sort bagger, the cover letter also states that he was improperly given sorter's pay; he should have been paid at the unskilled rate and UPS is "looking into the issue." Moreover, Ofak's accommodation is different than that of Wise. Ofak's accommodation states that he is to ask for assistance when presented with material weighing over 50 pounds. G.C. Exh. 16(b). On the other hand, Wise's accommodation simply states that his disability prevents him from doing "heavy lifting." Thus, contrary to the General Counsel's contention, UPS's treatment of Ofak not only does not implicate Respondent, but also fails to show relevant disparate treatment. At the time of the bidding in January 2016, Wise, who was a package handler, was not qualified to bid on a sorter's job. Nothing in Ofak's accommodation, which was implemented several months later, changes that fact. If Wise wishes to revisit his accommodation, he may ask his employer, UPS, for a readjustment. But this does not make Respondent's decision, with UPS approval, to change Wise's sorter's bid position, in accordance with his

The Threat Issue

The Facts

5 This part of the case involves an alleged threat made by Business Agent Licht to UPS employee Jason Nulton in connection with his support of fellow employee Henry Hairston in the latter's contractual grievance alleging improprieties in the part of Union Steward Leonard Monette.¹¹ That 2-page grievance was filed on July 15, 2015. G.C. Exh. 10. In assessing the alleged threat, however, it is necessary to consider the background of the July 2015 grievance, including its reference to an earlier grievance filed by Hairston alleging racial harassment of him by Monette.¹²

15 According to Hairston's uncontradicted testimony—Monette did not testify in this case—Monette repeatedly harassed him by calling him racially-tinged names, including "Black Opie" and "N-bomb." Tr. 74-76, 86-88. On June 27, 2014, Hairston filed a grievance on this matter, which was resolved by UPS management. G.C. Exh. 11, Tr. 79-80. As a result, Monette was disciplined for his treatment of Hairston. Tr. 192-193.

20 Hairston testified that the impetus for the filing of his July 2015 grievance was an incident where, in his view, Monette lied about Hairston's involvement in Monette's complaint about Nulton, who was, at the time, also a union steward, and the latter's alleged coziness with management. Tr. 76-78.

25 Nulton supported Hairston's testimony about the incident that gave rise to the July 2015 grievance and he spoke with Business Agent Licht about the incident. Tr. 94-97. Indeed, Licht testified that he learned about the incident immediately after it happened; and, at the time, he spoke with all the participants, including Monette. Tr. 178-179. Licht also confirmed that, when he talked to Nulton, he told Nulton that there were "workers, union members that are concerned about him (Nulton) out there walking around with management." Licht also told Nulton, "what Monette told me. That was part of what Mr. Hairston was upset about." Tr. 179.

35 Licht was involved in the processing of Hairston's July 2015 grievance. Tr. 175-178. During the investigation of the grievance, Hairston provided a statement to UPS management setting forth his position on the underlying incident. Hairston also provided the names of two witnesses in support of his statement, that of Nulton and another employee. G.C. Exh. 12, Tr. 80-82. Sometime in August 2015, Licht notified Nulton that the grievance had been filed and that UPS management wanted a statement from him on the underlying incident. Tr. 97-98.

Now to the alleged threat that is the subject of the complaint allegation on this part of the case. Nulton testified that, in two separate telephone conversations, once in

existing accommodation, arbitrary, discriminatory or in bad faith.

¹¹ Hairston, Nulton and Monette were all feeder drivers at the Harrisburg hub.

¹² Harrison is African-American.

the fall of 2015 and another early in the year in 2016, Licht told him that, if he gave a statement in support of Hairston's grievance and Monette "got into trouble," internal union charges would be filed against Nulton. Tr. 98-99.

5 Nulton also testified that Licht made a similar statement in a short hallway
meeting between him and Licht, immediately before a meeting he and Licht were to
have with UPS Labor Manager Darran Pray in April of 2016.¹³ The purpose of the
meeting with Pray, which was to be held in the feeder manager's office at the Harrisburg
10 hub, was to discuss the incident that gave rise to Hairston's July 2015 grievance and
the need to provide a statement to UPS management with respect to that grievance. Tr.
98-99. According to Nulton, in the hallway meeting between him and Licht outside the
feeder manager's office, Licht again told Nulton that, if he gave a statement in support
of Hairston's grievance and Monette got into trouble as a result, he, Nulton, would face
15 internal union charges. Licht advised Nulton to say he "could not recall anything" about
the Hairston grievance. Tr. 99-100.

During the meeting with Pray, Nulton declined to give a statement in support of
the grievance. He testified that he told Pray, in Licht's presence, that he was concerned
20 about union charges being filed against him that would endanger his job if he gave a
statement and he wanted UPS to protect him from that possibility. Tr. 102, 107. Licht's
direct testimony about the meeting with Pray was different. He testified that Nulton
refused to provide a statement about the incident involving Hairston and Monette.
According to Licht, Nulton said he did not want to get involved and asked if anyone else
25 had given a statement, but did not say anything about fearing internal union charges or
asking for protection by UPS for his job. Tr. 180-181. On cross-examination, after
stating that he could not remember the exact conversation, Licht conceded that Nulton
"may have said" something about being concerned about internal union charges. Tr.
194. Shortly thereafter, when shown his pre-trial affidavit, Licht conceded that he stated
30 in the affidavit that "Nulton said that he wouldn't give a statement because then he
would get charges filed against him by Monette." He also conceded that what he said in
the affidavit was true because the events were more "fresh" in his memory when he
gave the affidavit. Tr. 194-196, 204, G.C. Exh. 14. Thus, not only was Licht caught in a
serious contradiction, but, in the end, he corroborated Nulton's testimony on the point.¹⁴

35 Licht testified that, in the hallway meeting with Nulton, he simply advised Nulton
that Pray wanted Nulton to give a statement and said nothing concerning what the
statement was about. Tr. 181. In response to a question from Respondent's lawyer as
to whether he could "recall" discussing internal charges with Nulton in the hallway
conversation, Licht answered "no." Licht then denied threatening Nulton with charges,
40 although it is not clear whether his denial included the telephone threats related by
Nulton. Tr. 181-182. Licht also testified that, after the meeting with Pray, Nulton asked

¹³ The meeting between Pray, Licht and Nulton took place after a March 25, 2016 meeting on the grievance, which involved Pray, Licht and Hairston. As of the date of the hearing, the grievance had not been resolved and was still pending. G.C. Exh. 13, Tr. 82-84, 137, 177, 186-187.

¹⁴ Pray did not testify in this proceeding.

him whether he should give a statement and Licht told Nulton it was “his decision.” Tr. 182.

I credit Nulton that Licht made the threats as Nulton testified. Nulton impressed me as a very credible witness. His testimony was firm and direct and it survived vigorous cross-examination. Licht, on the other hand, did not give reliable testimony on this issue. He was very tentative and had problems of recollection. I found his testimony about what Nulton said in the meeting with Pray reflected adversely on his credibility, particularly because his testimony on direct was contradicted by his pre-trial affidavit. Moreover, Licht’s testimony about his initial reaction to the incident underlying the July 2015 grievance supports the plausibility of a threat to Nulton. Licht admittedly told Nulton that union members were concerned about Nulton “walking around with management,” the substance of Monette’s complaint about Nulton and his inclusion of Hairston in that complaint. In these circumstances, I have no difficulty in finding that Licht did indeed threaten Nulton that, if he supported Hairston’s grievance and Monette got into trouble, Nulton would be subject to internal union discipline—twice in telephone conversations and once in a face-to-face hallway meeting prior to the April 2016 meeting with Pray.¹⁵

Analysis

The General Counsel alleges that Respondent violated Section 8(b)(1)(A) when Business Agent Licht threatened employee Nulton with the filing of internal union charges if he acted as a witness in connection with a grievance filed by employee Hairston against Union Steward Monette. Section 8(b)(1)(A) prohibits unions from restraining or coercing employees in the exercise of their Section 7 rights, except in the enforcement of reasonable internal union rules. In *Office Employees Local 251 (Sandia National Laboratories)*, 331 NLRB 1417 (2000), the Board clarified the scope of Section 8(b)(1)(A) by ruling that internal union discipline gives rise to a violation only in certain circumstances, including where it “impairs policies imbedded in the Act.” See also *Laborers Local 91 (Council of Utility Contractors, Inc.)*, 365 NLRB No. 28 (2017).

It is well settled that grievance and arbitration procedures are fundamental components of national labor policy. As the Supreme Court has stated, “no one doubts that the processing of a grievance . . . is concerted activity within the meaning of [Section] 7” of the Act. *NLRB v. City Disposal Systems, Inc.*, 465 U.S. 822, 836 (1984). Therefore, unions may not use internal union discipline to punish employee-members for participating in grievance-arbitration proceedings in a manner contrary to the interests of other employees or to the union itself. See *Graphic Communications Local*

¹⁵ Respondent sought to undermine Nulton’s credibility on the ground that he was defeated in his reelection for union steward and that he thought the election, conducted by Business Agent Licht, was “fishy.” I do not believe that this circumstance reflected a bias on the part of Nulton or that it adversely affected his credibility. Nulton was quite candid in expressing his concern about the election results. Moreover, the election results reflect just as badly on Licht. Indeed, Licht could be viewed as biased in favor of upholding the position of his fellow union representative, Leonard Monette, as well as the Respondent’s litigation position and perhaps its reputation in what appears to be a significant internal union division.

388M (*Georgia Pacific*), 300 NLRB 1071 (1990), citing authorities, particularly, *Oil Workers Local 4-23 (Gulf Oil)*, 274 NLRB 475, 476 (1985).

In view of my credibility-based factual finding that, on three occasions, Business Agent Licht told Nulton that, if he supported Hairston in the latter's contract grievance against Union Steward Monette and Monette got into trouble, Nulton would be subjected to internal union charges, I also find that the statements constituted a threat that clearly comes within the above case law. Accordingly, I find that, in this respect, Respondent violated Section 8(b)(1)(A) of the Act. See *International Brotherhood of Teamsters Local 992 (UPS Ground Freight, Inc.)*, 362 NLRB No. 64 n. 1 (2015).

Conclusions of Law

1. By threatening an employee-member with internal union charges if he supported a fellow employee's grievance against one of Respondent's stewards, Respondent violated Section 8(b)(1)(A) of the Act.

2. The above violation is an unfair labor practice within the meaning of the Act.

3. Respondent has not otherwise violated the Act.

Remedy

Having found that Respondent has engaged in an unfair labor practice, I find that it must be ordered to cease and desist from its unlawful conduct and to take certain affirmative action designed to effectuate the policies of the Act, including the posting of an appropriate notice.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended¹⁶

ORDER

Respondent, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening employee-members with internal union charges for participating in grievance-arbitration proceedings or any other activity protected by Section 7 of the Act.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

¹⁶ If no exceptions are filed as provided in Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended order herein shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be waived for all purposes.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its offices, and all other places where notices to members are customarily posted, copies of the attached notice marked "Appendix A."¹⁷ Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Within 21 days after service by the Region, file with the Regional Director for Region 4, a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated at Washington, D.C., March 23, 2017.



Robert A. Giannasi
Administrative Law Judge

¹⁷ If this Order is enforced by a Judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX A.

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain on your behalf with your employer
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT threaten employee-members with internal union charges for participating in grievance-arbitration proceedings or any other activity mentioned above.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights listed above.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS and its affiliated LOCAL UNION
NO. 776

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

615 Chestnut Street, 7th Floor, Philadelphia, PA 19106-4404
(215) 597-7601, Hours: 8 a.m. to 5:00 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/04-CB-166651 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (215) 597-5354.

APPENDIX B
UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS and its affiliated LOCAL UNION NO
776 (UNITED PARCEL SERVICE, INC.)

And

Case 04-CB-166651

HENRY HAIRSTON, an Individual

and

Case 04-CB-170828

JAMES WISE, an Individual

ORDER RECEIVING INTO EVIDENCE G.C. EXH. 16, UNDER SEAL, AND ALJ EXH. 1

IT IS ORDERED that G.C. Exh. 16 and ALJ Exh. 1, identified in my decision issued this day, be admitted into Evidence.

IT IS ALSO ORDERED that any copy of G. C. Exh. 16 in the record of this Case is to be maintained under seal, subject to examination by the Board and any reviewing court of appeals. G. C. Exh. 16 is not to be furnished to outside sources pursuant to the Freedom of Information Act (FOIA) or pursuant to other requests.

Dated: March 23, 2017



Robert A. Giannasi
Administrative Law Judge